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Attorneys for Plaintiff Calendar Research LLC

THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Calendar Research LLC, a
Delaware limited liability company,

Plaintiff,

v.

Michael Hunter Gray, an
individual; **StubHub, Inc.**, a
Delaware corporation; **eBay Inc.**, a
Delaware corporation; **Lisa**
Dusseault, an individual; **Lasha**
Efremidze, an individual; and **Does**
5 through 10, inclusive,

Defendants.

Case No. 2:17-cv-04062-SVW-SS
Hon. Stephen V. Wilson

**Declaration of Douglas S. Curran In
Support of Plaintiff Calendar Research
LLC's Motion to Compel Additional
Discovery**

[Filed Concurrently with Notice of
Motion, Memorandum of Points and
Authorities, and [Proposed] Order]

DECLARATION OF DOUGLAS S. CURRAN

I, Douglas S. Curran, declare of as follows:

1. I am an attorney authorized to practice in this Court by admission *pro hac vice* and am a partner of Pierce Bainbridge Beck Price & Hecht LLP, counsel of record for Plaintiff Calendar Research LLC Plaintiff. I make this declaration in support of Plaintiff's Motion to Compel. I make this declaration based upon my own personal knowledge of the facts asserted herein, or when appropriate based upon a review of documents or conversations with my colleagues, and if called to testify, I could and would testify competently thereto.

2. On February 19, Mr. Gray and Mr. Efremidze produced over 23,000 documents: Mr. Gray produced 19,497 documents and Mr. Efremidze produced 3,826 documents. Attached as **Exhibits A and B** are true and correct copies of Mr. Gray's and Mr. Efremidze's respective February 19 production emails.

3. One week later, on February 26, 2019, Mr. Efremidze produced another 2,635 documents. Attached as **Exhibit C** is a true and correct copy of Mr. Efremidze's February 26 production email. Importantly, Mr. Efremidze's production contains Slack notifications sent to him from a Block & Tackle Labs Slack account, but did not contain any Slack conversations and messages. Block & Tackle is the contractor entity through which the individual defendants were hired by StubHub and eBay.

4. Defendants' productions reveal that they are still withholding documents, particularly Slack messages from the Block & Tackle Labs Slack account. Slack is an internal messaging system used by companies, teams, and firms to message and collaborate in real-time. Slack notifications are sent via email to a user to alert him of Slack messages that he received while not actively

1 using the Slack program. Calaborate used Slack extensively, and many of those
2 conversations were responsive and relevant to discovery in this action. Despite
3 creating and using a Block & Tackle Slack while working at StubHub, neither
4 Mr. Efremidze nor Mr. Gray produced any Slack messages, just Slack email
5 notifications. One such email notification, E0000094, shows that the Block &
6 Tackle Labs Slack account was created as early as March 26, 2015, and
7 indicates that the user “simplegray” was the account administrator. A true and
8 correct copy of E0000094 is attached as **Exhibit D**. Mr. Gray testified at his
9 January 7, 2019 deposition that “simplegray” was his Slack username at
10 Calaborate. As administrator, Mr. Gray should have access to all messages sent
11 to or from users of the Slack account, and Plaintiff’s counsel sought those
12 messages from Mr. Baranov. A true and correct copy of Plaintiff’s February 25
13 email to Mr. Baranov is attached as **Exhibit E**. Mr. Baranov replied to
14 Plaintiff’s email, noting that the account credentials were turned over to
15 Defendants’ document vendor on February 25. Attached as **Exhibit F** is a true
16 and correct copy of Mr. Baranov’s February 26 email to Plaintiff. Plaintiff
17 discussed these Slack messages with Mr. Baranov and requested that
18 Defendants produce these messages in JSON file format organized by Day,
19 Date, and Conversation Group with metadata fields indicating the UserID and
20 the date and time. Another recently produced document, G0231389, appears
21 to be an Evernote note created by Mr. Gray concerning his first day at Block &
22 Tackle. It is entitled “Day 1” and dated April 16, 2015, the effective date of the
23 Block & Tackle-StubHub Statement of Work, and notes that all major
24 communications should be kept in Slack. Attached as **Exhibit G** is a true and
25 correct copy of G0231389.

26 5. On February 22, 2019, Mr. Baranov provided a document that he
27 represented to be Mr. Efremidze’s privilege log. Attached as **Exhibit H** is a
28

1 true and correct copy of the purported privilege log that Mr. Efremidze
2 provided. On February 25, Plaintiff wrote to Defendants' counsel, Mr. Baranov,
3 requesting a proper privilege log. Attached as **Exhibit I** is a true and correct
4 copy of Plaintiff's February 25 email to Mr. Baranov. Mr. Baranov replied to
5 Plaintiff's email and promised to produce a corrected privilege log by February
6 27. Attached as **Exhibit J** is a true and correct copy of Mr. Baranov's February
7 25 email to Plaintiff. On February 28, 2019, at 10:22 pm, Mr. Baranov emailed
8 a document he described as a "supplemental privilege log." Attached hereto as
9 **Exhibit N** is a true and correct copy of that document.

10 6. Gray did not provide a privilege log. During the course of
11 Plaintiff's review of Gray's document production, Plaintiff's counsel noticed
12 that some documents produced by Gray contained likely privileged
13 information. As soon as Plaintiff's counsel determined that a document may
14 have contained privileged information, Plaintiff's counsel ceased reviewing it.
15 Plaintiff's counsel also observed that 30 documents with possibly privileged
16 information shared a metadata filepath, "PERSONAL STUFF\Mark Lawsuit."
17 Plaintiff also discovered one document outside the file path that also may
18 contain privileged information. Having made these observations, Plaintiff's
19 counsel instructed its document vendor to isolate and sequester all documents
20 with that filepath. In response, Plaintiff's vendor sequestered these documents,
21 removing them from the review process entirely. On February 26, Plaintiff
22 informed Mr. Baranov that it believed Mr. Gray had waived any potential claim
23 of privilege. Attached as **Exhibit K** is a true and correct copy of Plaintiff's
24 February 26 email to Mr. Baranov.

25 7. On February 22, Mr. Baranov also provided a declaration from
26 Defendants' discovery vendor. Attached as **Exhibit L** is a true and correct copy
27 of the declaration of William Anderson.

8. Moreover, Plaintiff has scheduled Mr. Gray's and Mr. Efremidze's depositions for March 4. Gray's deposition will begin at 7:30 AM to accommodate his work schedule. Attached as **Exhibit M** is a true and correct copy of Plaintiff's February 26 email to Mr. Baranov confirming the 7:30 AM deposition start time.

9. At no time during Plaintiff's negotiations with Mr. Baranov has it requested the production of any irrelevant documents, and indeed, has explained that it is not interested and would prefer to expend resources reviewing irrelevant documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that it was executed on February 27, 2019 in New York, New York.

Dated: February 27, 2019

Respectfully submitted,

/s/ Douglas S. Curran

Douglas S. Curran